

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SCHIAVONE CONSTRUCTION CO.,  
AMERICAN BRIDGE COMPANY, a Joint Venture,

Index No. 07 CIV 8389 (NRB)

Plaintiff,

**REPLY TO  
COUNTERCLAIMS**

- against -

THE CITY OF NEW YORK  
(Macombs Dam Bridge over the Harlem River),

Defendant.  
-----X

Plaintiff, Schiavone Construction Co. and American Bridge Company, a Joint Venture (the "Joint Venture"), by its attorney, Vincent J. Torna, as and for its Reply to the counterclaims of defendant, the City of New York (the "City"), asserted in its Answer to the Amended Complaint (the "Amended Answer") responds as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "63" of the Amended Answer.
2. Admits the allegations contained in paragraph "64" of the Amended Answer.
3. Denies the allegations contained in paragraph "65" of the Amended Answer, except affirmatively states that on or about April 12, 1999, the Joint Venture and the City, through the Commissioner of the Department of Transportation, duly entered into a written contract, Contract BRX287-R, Rehabilitation of Macombs Dam Bridge (the "Contract"), whereby for consideration to be paid to the Joint Venture by the City in the

amount of \$136,722,131.52, the Joint Venture agreed to perform certain work, labor and services at the Macombs Dam Bridge (the “Project”).

4. Denies the allegations contained in paragraphs “66”, “67” and “68” of the Amended Answer, except respectfully refers the Court to the Contract for a full and accurate statement of its contents.

5. Denies the allegations contained in paragraph “69” of the Amended Answer.

6. Denies the allegations contained in paragraph “70” of the Amended Answer.

7. In response to paragraph “71” of the Amended Answer, repeats and realleges the responses in paragraphs “1” through “6” of this Reply, as if fully set forth herein.

8. Denies the allegations contained in paragraphs “72”, “73”, “74” “75” and “76” of the Amended Answer, except respectfully refers the Court to the Contract for a full and accurate statement of its contents.

9. Denies the allegations contained in paragraph “77” of the Amended Answer.

10. Denies the allegations contained in paragraph “78” of the Amended Answer.

11. In response to paragraph “79” of the Amended Answer, repeats and realleges the responses in paragraphs “1” through “10” of this Reply, as if fully set forth herein.

12. Denies the allegations contained in paragraph “80” of the Amended Answer, except affirmatively states that the Macombs Dam Bridge carries traffic between the Boroughs of the Bronx and Manhattan.

13. Denies the allegations contained in paragraph “81” of the Amended Answer.

14. Denies the allegations contained in paragraph “82” of the Amended Answer.

15. Denies the allegations contained in paragraph “83” of the Amended Answer.

16. In response to paragraph “84” of the Amended Answer, repeats and realleges the responses in paragraphs “1” through “15” of this Reply, as if fully set forth herein.

17. Denies the allegations contained in paragraphs “85” and “86” of the Amended Answer, except admits that certain items of work listed on a punch list have not yet been performed, and affirmatively states that the Joint Venture is presently in the process of completing the punch list work.

18. Denies the allegations contained in paragraph “87” of the Amended Answer.

19. Denies the allegations contained in paragraph “88” of the Amended Answer.

**FIRST AFFIRMATIVE DEFENSE**

20. The counterclaims fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

21. The counterclaims are barred by the City’s interferences and delays to the Work.

**THIRD AFFIRMATIVE DEFENSE**

22. The counterclaims are barred because claims of alleged damages to the bridge, if any, have been resolved.

**FOURTH AFFIRMATIVE DEFENSE**

23. The counterclaims are barred because claims of alleged damages to the bridge, if any, are due to pre-existing conditions.


**WHEREFORE**, the Joint Venture demands judgment against the City as follows:

- (a) For the relief set forth in the Amended Complaint;
- (b) Dismissing the City’s First, Second, Third and Fourth counterclaims in their entirety; and

(c) Together with such costs and other relief as this Court may deem just and proper.

Dated: New York, New York  
March 18, 2008

VINCENT TORNA  
Attorney at Law

By:   
Vincent J. Torna (VJT-2542)  
Attorney for Plaintiff  
Schiavone Construction Co. and  
American Bridge Company, a Joint Venture  
101 East 52nd Street, 21st Floor  
New York, New York 10022  
(212) 644-1194

TO:

Michael A. Cardozo  
Corporation Counsel for the City of New York  
Attorney for Defendant the City of New York  
100 Church Street  
New York, New York 10007  
Attn: Duncan Peterson  
(212) 788-1103

## VERIFICATION


[illegible]

Carl Cosenzo being duly sworn, deposes and says, that he is an Authorized Signatory of Schiavone Construction Co. and American Bridge Company, a Joint Venture, named as a plaintiff herein; that he has read the foregoing REPLY TO COUNTERCLAIMS and knows the contents thereof; that the same is true to his own knowledge, except as to those matters stated to be alleged upon information and belief and as to those matters, he believes them to be true. Deponent further says that the reason this verification is not made by the above Joint Venture is because it is not an individual and deponent is an Authorized Signatory.

  
Carl Cosenzo

Sworn to before me this  
18th day of March, 2008

18th day of March, 2008

  
Notary Public

**Danielle Alviggi**  
**Notary Public of New Jersey**  
**My Commission Expires June 06, 2012**

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
  : ss.:  
COUNTY OF NEW YORK    )

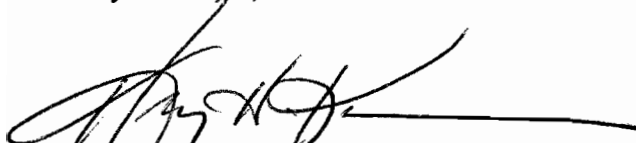
Gerardo Gonzalez, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in New York, New York. That on the 19th day of March, 2008, deponent served the within **REPLY TO COUNTERCLAIMS** upon

**Michael A. Cardozo**  
**Corporation Counsel of the City of New York**  
**Attorney for Defendant City of New York**  
**100 Church Street**  
**New York, New York 10007**

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository box under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
\_\_\_\_\_  
Gerardo Gonzalez

Sworn to before me this  
19th day of March, 2008.

  
\_\_\_\_\_  
Notary Public

**HENRY H. KORN, Notary Public,**  
**State of New York, No. 60-462666**  
**Qualified in Westchester County**  
**Commission Expires November 30, 2010**